U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Nebraska Service Center Date: OCT 11 2000

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of the Foreign Residence Requirement under Section 212(e) of the Immigration and Nationality Act, 8 U.S.C. 1182(e)

IN BEHALF OF APPLICANT: [redacted]

Public Copy
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Zambia who is subject to the two-year foreign residence requirement of § 212(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(e), because he participated in a program which was financed by a government agency. The applicant was admitted to the United States as a nonimmigrant exchange visitor in September 1995. The applicant married a United States citizen, on August 8, 1997. He is now seeking the above waiver after alleging that his departure from the United States would impose exceptional hardship on his U.S. citizen spouse and child.

The director determined the record failed to establish his U.S. citizen spouse would suffer exceptional hardship and denied the application accordingly.

On appeal, the applicant states that the company which sponsored his training [redacted] has become insolvent and there is no guarantee that he would have a job upon his return to [redacted] The applicant presents evidence of their considerable debt, including approximately $18,000 in credit card debt and $21,000 from student loans and his wife's limited income as a day care teacher. The applicant states that, if he had to return to [redacted] he could not assist his wife in repaying that debt. The applicant states that his wife is still in college and could not accompany him to Zambia.

Section 212(e) EDUCATIONAL VISITOR STATUS; FOREIGN RESIDENCE REQUIREMENT WAIVER.-No person admitted under § 101(a)(15)(J) or acquiring such status after admission-

> (i) whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his residence,
>
> shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under § 101(a)(15)(H) or § 101(a)(15)(L) until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of at least two years following departure from the United States: Provided, That upon the favorable recommendation of the Director, pursuant to the request of an interested United States Government agency (or, in the case of an alien described in clause (iii), pursuant to the request of a State Department of Public Health, or its equivalent), or of the Commissioner of Immigration and Naturalization after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or

> a lawfully resident alien),...the Attorney General may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General to be in the public interest....

Matter of Mansour, 11 I&N Dec. 306 (D.D. 1965), held that even though it is established that the requisite hardship would occur abroad, it must also be shown that the spouse would suffer as the result of having to remain in the United States. Temporary separation, even though abnormal, is a problem many families face in life and does not represent exceptional hardship as contemplated by § 212(e) of the Act. See Matter of Bridges, 11 I&N Dec. 506 (D.D. 1965).

Adjudication of a given application for a waiver of the foreign residence requirement is divided into two segments. Consideration must be given to the effects of the requirement if the qualifying spouse and/or child were to accompany the applicant abroad for the stipulated two-year term. Consideration must separately be given to the effects of the requirement should the party or parties choose to remain in the United States while the applicant is abroad.

An applicant must establish that exceptional hardship would be imposed on a citizen or lawful permanent resident spouse or child by the foreign residence requirement in both circumstances and not merely in one or the other. Hardship to the applicant is not a consideration in this matter.

In the House of Representatives Report Number 721, dated July 17, 1961, entitled "Immigration Aspects of the International Educational Exchange Program," subcommittee number one of the Committee on the Judiciary reiterates and stresses the fundamental significance of a most diligent and stringent enforcement of the foreign residence requirement. The report states:

> It is believed to be detrimental to the purposes of the program and to the national interests of the countries concerned to apply a lenient policy in the adjudication of waivers including cases where marriage occurring in the United States, or the birth of a child or children, is used to support the contention that the exchange alien's departure from this country would cause personal hardship.

Courts have effectuated Congressional intent by declining to find exceptional hardship unless the degree of hardship expected was greater than anxiety, loneliness, and altered financial circumstances ordinarily anticipated from a two-year sojourn abroad. See Mendez v. Major, 340 F.2d 128, 132 (8th Cir. 1965); Talavera v. Pederson, 334 F.2d 52, 58 (6th Cir. 1964).

The record contains a statement from the applicant's spouse indicating that she earns $8.50 per hour as a day care teacher working between 36 to 40 hours per week.

The record fails to specify when the family debt began to accrue, whether before or after their marriage in August 1997. The record reflects that loan numbers 501, 502 and 503 were distributed to the applicant's wife in October 1995, August 1996 respectively for a total of $10,125.00. Debt incurred by the applicant's wife prior to their marriage is her responsibility and not a hardship. Further, the record fails to establish that the applicant's wife is still attending college. A bill from [redacted] College dated April 4, 1999 states that her anticipated graduation date is May 18, 1999.

The hardship in this matter appears to be primarily financial in nature based on debts the applicant's wife incurred prior to her marriage. Further, the hardship of separation anticipated here, if the applicant's spouse chose to remain in the United States, is the usual hardship which might be anticipated during a temporary separation between family members caused by military, business, educational, or other obligations. While certainly inconvenient, the hardships advanced in this matter do not rise to the level of "exceptional" as contemplated by Congress.

In this proceeding, it is the applicant alone who bears the full burden of proving his or her eligibility. Matter of T--S--Y--, 7 I&N Dec. 582 (BIA 1957), and Matter of Y--, 7 I&N Dec. 697 (BIA 1958). In this case, the burden of proof has not been met, and the appeal will be dismissed.

ORDER: The appeal is dismissed.